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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.1903/2008, IA No.11064/2008 (under Order XXXIX Rules 1&2 CPC) and IA No.6015/2009 (under Order XXXIX Rule 2A CPC).

SHRI MANOHAR SINGH Plaintiff
Through: Mr. Ajay Amitabh Suman and Mr.
S.K. Bansal, Advs.

versus

ABDUL WARIS AND ANR. Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.01.2017**

1. The suit is listed today in terms of the order dated 15th December, 2016, upon the defendants having failed to lead any evidence and the evidence of the defendants having been closed.
2. None appears for the defendants.
3. A perusal of the order sheet shows that though the counsel for the defendants on 13th May, 2016 cross-examined the PW-1 but did not appear on 14th September, 2016 to which date the hearing on 13th May, 2016 was adjourned for the remaining evidence of the plaintiff. The plaintiff on 14th September, 2016 closed his evidence and the suit was adjourned to 15th and 16th December, 2016 for evidence of defendants.
4. On 15th December, 2016 also none appeared for the defendants and accordingly the evidence of the defendants was closed as aforesaid and the suit ordered to be listed before this Bench for today.
5. The defendants are proceeded against *ex parte*.

6. I have heard the *ex parte* arguments of the counsel for the plaintiff and perused the file.
7. The plaintiff has instituted this suit for permanent injunction to restrain infringement of its registered trademark and its copyright and to restrain the defendants Mr. Abdul Waris and M/s. Sana Mehendi Industries from thereby passing off their goods as that of the plaintiff.
8. Vide *ex parte* order dated 12th September, 2008, while issuing summons of the suit, the defendants were restrained from selling, exporting, displaying, advertising the marks 'SANARANG' and 'SANARANG' label with device of a woman and 'SANARANG' label with the device of the foot identical or deceptively similar to the mark of the plaintiff in relation to Mehendi, Henna and related/allied products.
9. The said order continues in force.
10. Both the defendants filed their common written statement and to which a replication was filed by the plaintiff and on the pleadings of the parties, on 30th August, 2010 the following issues were framed:-

“(a) *Whether the plaintiff is the proprietor of the trade mark:*

(i) *Trade Mark-SATRANG, registration no. 1025981 in Class 3 goods.*

(ii) *Trade Mark-SATRANG LABEL WITH DEVICE OF WOMEN, registration no. 1447914 in Class 3 goods.*

(iii) *Trade Mark-SATRANG LABEL WITH DEVICE OF FOOT, registration no. 1447915 in Class 3 goods.*

(iv) *Trade Mark-SINGH SATRANG LABEL, registration no. 1315190 in Class 3 goods? OPP*

- (b) *Whether the defendants has infringed the trade mark of the plaintiff, if so, to what effect? OPD*
- (c) *Whether the defendants is passing off the goods manufactured by the defendants being deceptively similar to the trade mark and design of the plaintiff by using the word SATRANG AND SATRANG LABEL WITH DEVICE OF FOOT, SATRANG LABEL WITH DEVICE OF WOMAN AND SINGH SATRANG LABEL, if so, to what effect? OPD*
- (d) *If the issue nos. (b) and (c) are decided in affirmative, whether the plaintiff is entitled to a decree for grant of damages to the tune of Rs.20,01,000/- as prayed for? OPD*
- (e) *Whether the defendants have violated the copyright of the plaintiff in design SATRANG AND SATRANG LABEL WITH DEVICE OF FOOT, SATRANG LABEL WITH DEVICE OF WOMAN AND SINGH SATRANG LABEL, if so to what effect? OPD*
- (f) *Relief.”*

11. I have perused the evidence adduced by the plaintiff through PW-1 and his cross-examination by the counsel for the defendants. I am satisfied that the plaintiff has proved/established a case for grant of the relief of permanent injunction as claimed in prayer paragraph 24(a) of the plaint.

12. The counsel for the plaintiff presses for the relief of damages.

13. I have perused the reports of the Court Commissioners appointed by this Court vide order dated 5th May, 2009 on the application of the plaintiff under Order 39 Rule 2A of the Code of Civil Procedure, 1908 (CPC), to visit the premises of the defendants. No objections were filed to the said reports. The said reports establish wide scale infringement and passing off

having been indulged in by the defendants including after the interim order in this suit. The application of the plaintiff under Order XXXIX Rule 2A CPC is still pending consideration.

14. In this view of the matter, though the plaintiff has not adduced any evidence of its entitlement to damages, it is deemed appropriate to award damages in the sum of Rs.3,00,000/- to the plaintiff.

15. A decree is accordingly passed in favour of the plaintiff and against the defendants jointly and severally (i) of permanent injunction in terms of prayer paragraph 24(a) of the plaint; and, (ii) for recovery of damages in the sum of Rs.3,00,000/-.

16. The plaintiff is also awarded costs of the suit.

17. Counsel's fee assessed at Rs.50,000/-.

18. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

JANUARY 19, 2017

‘pp’..